



June 17, 2019

SENT VIA ONLINE SUBMISSION FORM

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
(202)-566-1667

RE: Freedom of Information Act Request

To the Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. Consistent with this mission and pursuant to 40 C.F.R. § 2.107(l)(2)(i) and the Freedom of Information Act, 5 U.S.C. § 552, CFS, respectfully request the following information:

Any and all documents related to the State FIFRA Research and Evaluation Group (SFIREG)'s June 3 & 4, 2019 Full Committee meeting of the 10 EPA regions in their co-regulatory capacity in pesticide enforcement and/or certification programs¹ regarding:

(a) Regional reporting of dicamba injury through the growing season; and

(b) EPA's 2019 end-of-season survey on dicamba injury.

"All documents" includes but is not limited to all correspondence, minutes, memoranda, communications and/or other documents received from or given to other agencies, maps, plans, drawings, emails, reports, databases, and phone notes. This request includes all documents that have ever been within your custody or control, whether they exist in agency "working," investigative, retired, electronic mail, or other files currently or at any other time.

This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

¹ See Ass'n of Am. Pesticide Control Officials, *SFIREG* (last visited June 17, 2019) <https://aapco.org/2015/07/30/sfireg-3/>.

REQUEST FOR FEE WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. THE PRESENT DISCLOSURE IS IN THE PUBLIC INTEREST BECAUSE IT WILL SIGNIFICANTLY CONTRIBUTE TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES OF GOVERNMENT.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

A. The subject of the disclosure concerns “the operations and activities of the government.”

The requested information pertains to EPA’s oversight of state distribution and regulation of pesticides and the “co-regulatory relationship required by the states’ primacy role in pesticide enforcement and/or certification programs.”² SFIREG is the EPA division with regulatory oversight over the regional use and enforcement of pesticides, created by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). It is irrefutable that of EPA/SFIREG’s regulatory control and oversight of pesticides, specifically dicamba, is clearly an identifiable operation of the government. As a result of this regulatory role, SFIREG requires regional EPA offices to report on dicamba related injuries to keep track of the impact that its widespread use may have on the public and other crops. Intra-agency consultation and reporting is also a clearly identifiable operation and activity of the government. This disclosure will demonstrate to the public at-large the nature of EPA/SFIREG’s regulatory control over pesticides and the intra-agency reporting occurring under FIFRA.

² *Id.*

B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.

As discussed in the previous section, the present disclosure will provide the public a better understanding of the nature of EPA/SFIREG’s regulation of dicamba and the intra-agency reporting systems in place. Disclosing these reporting systems and the future approach of EPA/SFIREG will take on reporting mechanisms gives the public a better understanding of the regulations in place to oversee pesticide use. CFS is a nonprofit organization that informs, educates and counsels the public —via legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, *Food Safety Now!*—on the harm done to human health, animal welfare, and the environment by industrial agriculture. Accordingly, CFS is an effective vehicle to disseminate information on pesticides like dicamba and their effect on the environment.

Simultaneously, this FOIA will help CFS fulfill its well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which the FOIA stands.

II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO THE CENTER.

CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See, e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA.

Based upon the foregoing, CFS requests that this FOIA be classified within EPA’s fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact us to discuss the proper scope of the response. If any exemption from FOIA’s disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document that may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to tyundt@centerforfoodsafety.org. . Electronic materials are preferred but if records must be mailed, please send to 303 Sacramento Street, 2nd Floor, San Francisco, CA 94111. Please call me at 415-826-2770 or email me at tyundt@centerforfoodsafety.org if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

/s/ *Tori Yundt*

Tori Yundt
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